

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001741-WC

LADEGAST & HEFFNER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-80463

BILLY CARPENTER;
RIFLE COAL COMPANY;
HON. J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; KELLER, JUDGE; BUCKINGHAM,¹ SENIOR JUDGE.

KELLER, JUDGE: Ladegast & Heffner petitions for review of an opinion of the

Workers' Compensation Board (the "Board") affirming the ALJ's order finding that KRS

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

342.670 provided extraterritorial coverage to Billy Carpenter. For the reasons set forth below, we affirm.

FACTS

Two companies, Rifle Coal Company (“Rifle”) and Associated Contractors, LLC (“Associated”), operate out of the same office in West Liberty, Kentucky. The companies, which have some common ownership, are operated as separate entities. The companies treat employees as common employees, sharing and trading employees as dictated by each company's needs. However, for accounting purposes, each company maintains a separate payroll for employees that it uses.

In April of 2004, Billy Carpenter, a lifelong Kentucky resident, went to the West Liberty office to apply for a job as a mechanic with Rifle. Carpenter spoke with Rachelle Frederick, the bookkeeper for both Rifle and Associated. Frederick advised Carpenter that there was a job available in Salyersville, Kentucky, that would last for approximately one week. Following that, a temporary job would be available in West Virginia, after which Carpenter would be brought back to Kentucky for permanent work.

Two days after he applied for the job, Carpenter was advised to report to work at a Salyersville, Kentucky, job site operated by Associated. Carpenter worked for and was paid by Associated for one week of work at the Salyersville site. Carpenter testified that he only worked at the Salyersville site for one week because the project was essentially completed and was in the process of closing down. After completion of the Salyersville job, other employees on that job site transferred to job sites in Knott County,

Kentucky; Logan, West Virginia; and Big Stone Gap, Virginia. Carpenter underwent two weeks of training in West Virginia to obtain his "miner's card", then began working at a job site operated by Rifle in Logan, West Virginia. Carpenter continued to work at the Logan job site until his work injury on July 20, 2004. While working at the Logan site, Carpenter stayed in a motel in Logan during the week, driving from his home in Kentucky to Logan every Monday and returning to his home every Friday.

Frederick testified that Rifle performs reclamation work in Kentucky, West Virginia, and Virginia, hiring employees to work jobs as needed. Although Rifle has various job sites, it has only one office, in West Liberty, Kentucky. Because of its various operations, Rifle has Kentucky workers' compensation insurance and also provides West Virginia workers' compensation coverage for employees who work in West Virginia for 90 days or more. Frederick believes that no workers' compensation premiums for employees who are residents of Kentucky are owed in West Virginia until such employees have worked in West Virginia for 90 days.

Rifle reported Carpenter's work injury to its Kentucky workers' compensation carrier, Associated General Contractors Self Insured Fund as administered by Ladegast & Heffner (collectively referred to herein as "Ladegast"). After determining that Carpenter's injury occurred in West Virginia, that Carpenter was working in West Virginia at the time, and that Carpenter had never worked for Rifle in Kentucky, Ladegast notified Carpenter and Rifle that it was denying his claim for Kentucky benefits. In a classic Catch 22, Carpenter also received notification from the West

Virginia Workers' Compensation Commission that his claim had been denied because a “[c]laim has been filed with KY carrier.” Faced with denial of his claim by both jurisdictions, Carpenter formally filed a claim for benefits in Kentucky.²

Following a rather lengthy procedural path, the ALJ ultimately bifurcated Carpenter's underlying claim from the issue of whether Carpenter had coverage under KRS Chapter 342. In an opinion and order dated March 3, 2006, the ALJ found that Kentucky does have jurisdiction under KRS 342.670(1)(b). Ladegast timely appealed from that opinion and, on July 31, 2006, the Board rendered an opinion affirming the ALJ. Ladegast seeks review of that opinion by the Board, arguing that Carpenter's employment was principally localized in West Virginia, thereby removing Carpenter from Kentucky's jurisdiction. Carpenter argues that the ALJ correctly determined that his employment was not principally localized in any state, giving Kentucky jurisdiction over his claim under KRS 342.670(1)(b).

STANDARD OF REVIEW

If a claimant succeeds before the ALJ, our review is limited to determining if the decision of the ALJ is supported by substantial evidence. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). We must defer to the opinion of the Board unless we find that it has “overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). Therefore, we

² It is unclear from the record if Carpenter ever formally pursued a West Virginia claim. However, whether Carpenter pursued a claim in West Virginia has no bearing on the issue before us.

must determine if the ALJ and the Board correctly interpreted and applied the law to the essentially undisputed facts. *See Hinkle v. Allen-Codell, Co.*, 298 Ky. 102, 106-7, 182 S.W.2d 20 (1944).

APPLICATION OF KRS 342.670(1) AND (5)(d)

For the reasons set forth below, we hold that the ALJ correctly interpreted the law and correctly applied the facts to the law. When an employee is injured while in another state, KRS 342.670 provides the conditions under which Kentucky will have coverage over that employee's workers' compensation claim. In undertaking our analysis of this issue, we must determine if Carpenter falls within the general purview of KRS 342.670 and, if he does, which of the four categories in KRS 342.670(1) apply to him. In relevant part, KRS 342.670 provides as follows:

(1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he . . . would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee . . . shall be entitled to the benefits provided by this chapter, if at the time of the injury:

(a) His employment is principally localized in this state, or

(b) He is working under a contract of hire made in this state in employment not principally localized in any state, or

(c) He is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his employer, or

(d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

The parties agree that Carpenter's injury occurred while he was working in West Virginia. Furthermore, the parties agree that, if Carpenter's injury had occurred in Kentucky, Carpenter would be entitled to benefits. Therefore, Carpenter falls within the group of employees covered by KRS 342.670.

We must next determine whether Carpenter falls within KRS 342.670(1)(a), (b), (c), or (d). Carpenter was not working outside of the United States and Canada; therefore, we can eliminate KRS 342.670(1)(d) from consideration. A key element in the remaining three categories is where employment is "principally localized." Therefore, to determine which of those three categories covers Carpenter, we must determine where his employment was principally localized. KRS 342.670(5)(d) provides that a person's employment is principally localized in this or another state when:

1. His employer has a place of business in this or the other state and he regularly works at or from that place of business,
or
2. If subparagraph 1 foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or the other state[.]

In order for KRS 342.670(5)(d)1. to apply, Rifle must have a "place of business" in a state and Carpenter must regularly work at or from that place of business. It is undisputed that Carpenter only worked for Rifle in the State of West Virginia. Therefore, we must determine whether Rifle had a place of business in West Virginia.

Ladegast argues that Rifle had a place of business in West Virginia because Carpenter worked at a job site in Logan, West Virginia for approximately two months. Carpenter argues that Rifle did not have a place of business in West Virginia because Rifle did not lease or own any property in West Virginia.

As noted by the parties, there are only a handful of cases in Kentucky addressing the issue raised herein. The primary case is *Haney v. Butler*, 990 S.W.2d 611 (Ky. 1999), wherein the Supreme Court of Kentucky provided a detailed summary of the law of extraterritorial coverage in Kentucky. In *Haney*, an employee of Haney Leasing, a Kentucky leasing company, died while working in Alabama. Haney Leasing did not own or lease any property in Alabama and did not have a business office in Alabama.

However, Haney Leasing did use port facilities in Alabama. As does Ladegast, Haney Leasing argued that the decedent's employment was principally localized in Alabama because he worked primarily in Alabama. In addressing that argument, the Court stated as follows:

The employer argues that because the decedent worked most of the time in Alabama and was injured in Alabama, public policy favors Alabama jurisdiction over the claim. We observe, however, that such considerations were presumably taken into account by the legislature in the drafting of KRS 342.670. As was recognized by the tribunals below, an analysis of whether the Kentucky Act applies to an extraterritorial claim turns upon the definition of the term "principally localized" which is provided in KRS 342.670(4)(d)1. and 2. A review of the provision makes it clear that a particular set of facts must be considered, first, in view of subsection (4)(d)1. Only if that provision does not apply, does the analysis proceed to subsection (4)(d)2. It may be concluded that a particular employment is not principally

localized in any state only after a determination that both subsections (4)(d)1. and (4)(d)2. do not apply.

Here, the ALJ determined that the decedent's employment was principally localized in Alabama pursuant to subsection (4)(d)1., so the question on appeal is whether there was substantial evidence that the employer “ha[d] a place of business” in Alabama and substantial evidence that the decedent regularly worked at or from that place of business. We are aware of no decision which construes the phrase “has a place of business” for the purpose of determining if a worker's employment is principally localized in a particular state.

In *Eck Miller Transportation Corporation v. Wagers*, Ky.App., 833 S.W.2d 854 (1992), the injured truck driver was a Kentucky resident; there was evidence that he did a substantial amount of work-related activities (paperwork, vehicle maintenance, etc.) at his home in Kentucky; the employer had a freight terminal in Kentucky; and the worker's paychecks were drawn on a Kentucky bank. Although the worker was notified of his hiring in Kentucky, the necessary paperwork was done at the employer's principal office which was located in Indiana, and he was subsequently assigned to the employer's freight terminal in Tennessee. It was from the Tennessee terminal that he essentially received all his work orders, and he was injured in Tennessee. In reinstating the ALJ's decision, the court concluded that the worker regularly worked from the employer's Tennessee freight terminal and that, regardless of other factors, there was substantial evidence that his employment was principally localized in Tennessee pursuant to KRS 342.670(4)(d)1. There, it was undisputed that the Tennessee freight terminal constituted a place of business for the employer.

In *Davis v. Wilson*, Ky.App., 619 S.W.2d 709 (1980), the employer purchased junked cars and crushed them with a mobile car-crusher. He lived in Kentucky and conducted the business from a location in Pineville, Kentucky, but the car-crushing device was used both in Kentucky and in Tennessee. The injured worker was a Kentucky resident and was hired in Kentucky but injured in Tennessee. At the time of the injury,

he had been employed for a total of eleven weeks, working two weeks (18% of the total) in Kentucky and nine weeks (82% of the total) in Tennessee. The “old” Workers' Compensation Board had denied extraterritorial coverage. Addressing KRS 342.670(4)(d)1., the Court of Appeals determined that, even if it were assumed that the employer had a place of business in both Kentucky and Tennessee, there was no steady or uniform practice of working in either state. In other words, the injured worker worked sporadically in both states but “regularly” in neither; therefore, the court concluded that subsection(4)(d)1. did not apply on those facts. However, because the worker was a Kentucky resident and spent a substantial amount of time working in Kentucky, the evidence compelled a determination that the employment was principally localized in Kentucky pursuant to subsection (4)(d)2. As a result, the claim was held to come within the requirements of KRS 342.670(1)(a).

As is apparent, neither case sheds light on what the legislature intended by the phrase “has a place of business;” furthermore, neither does Larson, *Larson's Workers' Compensation Law*, § 87.40, *et. seq.*, although it is instructive concerning the principles of extraterritorial jurisdiction. We observe, however, that the use of the word “has” denotes possession. *Webster's New Collegiate Dictionary*, 1975 edition. Having considered KRS 342.670 in its entirety, the arguments of the parties, and the opinions of the tribunals below, we conclude that for an employment to be principally localized within a particular state for the purposes of KRS 342.670(4)(d)1., the employer must either lease or own a location in the state at which it regularly conducts its business affairs, and the subject employee must regularly work at or from that location.

Id. at 616-17.³ With that overview in mind, the Court then held that, because Haney Leasing did not own or lease a location in Alabama, the decedent's employment was not principally localized in Alabama.

³ At the time *Haney* was decided, the current KRS 342.670(5)(d) was KRS 342.670(4)(d). Although the numbering in the statute changed, the language did not. Therefore, *Haney* is applicable to the current KRS 342.670(5)(d).

Like Haney Leasing, Rifle did not own or lease a location in the state where Carpenter was injured. Furthermore, like the decedent in *Haney*, Carpenter worked primarily outside of Kentucky, and suffered a work injury while working outside of Kentucky. Therefore, we hold that, under the *Haney* standard, the ALJ and the Board correctly determined that Carpenter's employment was not principally localized in West Virginia and that KRS 342.670(5)(d)1. does not apply.

Having eliminated KRS 342.670(5)(d)1., we can easily dispose of KRS 342.670(5)(d)2. As noted by the ALJ and the Board, there is no dispute that Carpenter was "domiciled" in Kentucky at all relevant times. Therefore, in order for KRS 342.670(5)(d)2. to apply, Carpenter would have had to have spent a substantial part of his working time in the service of Rifle in Kentucky. It is not disputed that the only work Carpenter performed for Rifle was performed in West Virginia, which was not Carpenter's state of domicile. Therefore, KRS 342.670(5)(d)2. does not apply.

We now return to the three categories in KRS 342.670(1)(a), (b), and (c). KRS 342.670(1)(a) applies if "employment is principally localized in" Kentucky. All of Carpenter's work for Rifle was performed in West Virginia. Therefore, KRS 342.670(1)(a) does not provide coverage to Carpenter.

KRS 342.670(1)(c) applies if there was a contract of employment made in Kentucky and employment was "principally localized in another state whose workers' compensation law is not applicable to" the employer. As we previously noted, Carpenter's employment was not principally localized in West Virginia because Rifle did

not have a place of business in West Virginia. Therefore, KRS 3423.670(1)(c) does not provide coverage to Carpenter.

Having eliminated KRS 342.670(1)(a), (c), and (d), we are left with KRS 342.670(1)(b), which applies to an employee who entered into a contract of employment in Kentucky and whose employment is not principally localized in any state. The parties do not dispute that Carpenter and Rifle entered into a contract of employment in Kentucky. As the Court held in *Haney*, "[i]t may be concluded that a particular employment is not principally localized in any state only after a determination that both subsections (4)(d)1. and (4)(d)2. do not apply." As we previously noted, Carpenter's employment was not principally localized in either Kentucky or West Virginia, and neither KRS 342.670(1)(5)(d)1. nor 2. applies to Carpenter; therefore, we hold that Carpenter's claim is covered by KRS Chapter 342 pursuant to KRS 342.670(1)(b).

Finally, we note that Ladegast argues that "the *Haney* test as to whether the company owns or leases property in a given location is simply not a sufficiently defining test and certainly would be an antiquated test to apply in today's technology [sic] society." We disagree. When interpreting a statute, the court is to assume that the General Assembly intended the statute to mean exactly what it says. *Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005). Furthermore, "the legislature is presumed to be aware of the existing law at the time of enactment of a later statute[.]" *Stogner v. Commonwealth*, 35 S.W.3d 831, 835 (Ky.App. 2000), and the legislature, if it did not

change a statute when given the opportunity, did not intend to change the statute or its interpretation. *See Bogard v. Commonwealth*, 687 S.W.2d 533 (Ky.App. 1984).

We note that the Supreme Court of Kentucky decided *Haney* in February of 1999 and denied rehearing in June of 1999. The legislature made major revisions to KRS Chapter 342 in 2000 and chose not to change the language of KRS 342.670(5)(d)1., an indication "that such considerations were presumably taken into account by the legislature in the drafting of KRS 342.670." *Haney*, 990 S.W.2d at 616. Therefore, there is no reason to change the definition of "place of business" from the one set forth by the Court in *Haney*.

CONCLUSION

For the above reasons, we hold that the ALJ and the Board correctly found that Carpenter is entitled to coverage under KRS Chapter 342 by virtue of KRS 342.670(1)(b). Therefore, we affirm the opinion of the Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Terri Smith Walters
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Todd D. Willard
Lexington, Kentucky